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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,693	09/08/2003	Roy Higgs		1258

7590 09/17/2008
Patent Office of J. John Shimazaki
P.O. Box 650741
Sterling, VA 20165

EXAMINER

BOVEJA, NAMRATA

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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09/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/657,693	Applicant(s) HIGGS, ROY
Examiner NAMRATA BOVEJA	Art Unit 3622

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 20, 21, 23-33 and 35-39.
Claim(s) withdrawn from consideration: 1-19, 22 and 34.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622

/N. B./
Examiner, Art Unit 3622

Continuation of 11. The Applicant arguments are not persuasive.

The Applicant argues with respect to amended claims 20 and 32 that Zimmerman's shopping card program that lasts 9 days each year at the same time each year is not an ongoing activity. The Applicant further states that a definition for ongoing is continuing, since he has not defined the term ongoing in his specification. With respect to this, the Examiner respectfully disagrees with the Applicant. First of all, when an just because an event only takes place once a year for 9 days doesn't mean that it is not ongoing. The event takes place annually for the same number of days, and it is a recurring event that continues to occur each year (page 1 paragraph 2, page 2 paragraphs 8-10, and page 3 paragraph 1). To clarify the Examiner's position, the Examiner would like the Applicant to consider the following two examples. Some people subscribe to the daily newspaper and others just subscribe to the weekend paper. Just because the weekend subscribers receive the papers during the weekends and not on the weekdays, does not mean that they are not ongoing subscribers, since they do continue to receive the paper every weekend. The frequency is not what matters, rather the fact that the activity continues to occur at a fixed interval of time is what is pertinent to determine if an activity is ongoing. As an another example, people who subscribe to magazines or journals that may be published once a month or once a quarter are nevertheless ongoing subscribers regardless of the frequency of publication. If the Applicant wanted ongoing to mean a specific frequency, he should have specified so in his specification. However, the Applicant has not defined this term in the specification.

The Applicant cites page 5, lines 8-13 and page 11, line 22 to page 12, line 2 of his specification to support his assertions. However, these sections of the specification further support the Examiner's position. These portions of the specification disclose that various activities can be rotated throughout the seasons such that you can have a putting green and a pool in the summer months and an ice skating rink in the winter months. This also illustrates, like the examples pointed out by the Examiner above, that it is not the number of days each activity is offered in a year that is determinative in concluding that the activity is ongoing but rather that the fact that the activity is repeated after a fixed amount of time that make the activity ongoing.

Therefore, the Applicant's arguments are not persuasive. Since the Applicant had previously disclosed the amended limitations in dependent claims 22 and 34 and the amendments do not require further search, the Examiner is entering the claim amendments for the purposes of appeal.